

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
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 Plaintiff,)
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ROBERT H. SAUNDERS,)
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)
 Defendant.)

Cr. ID No. 89008879DI

Submitted: January 22, 2020
Decided: May 19, 2020

**COMMISSIONER’S REPORT AND RECOMMENDATION THAT
DEFENDANT’S MOTIONS FOR POSTCONVICTION RELIEF AND
APPOINTMENT OF COUNSEL SHOULD BE DENIED.**

Maria T. Knoll, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

Robert H. Saunders, James T. Vaughn Correctional Center, Smyrna, Delaware,
pro se.

PARKER, Commissioner

This 19th day of May 2020, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

BACKGROUND AND PROCEDURAL HISTORY

1. In 1976, a Superior Court jury convicted Defendant Robert Saunders of Murder in the First Degree and related offenses. Saunders was sentenced to life in prison without the possibility of probation or parole.¹
2. The Delaware Supreme Court affirmed Saunders' conviction and sentence on direct appeal.²
3. Thereafter, Saunders filed many unsuccessful petitions seeking to overturn his conviction and sentence. Saunders filed ten prior motions for postconviction relief and a number of federal habeas petitions.³ All of Saunders previously filed postconviction motions have been denied.

¹ *Saunders v. State*, 2013 WL 1559231 (Del. 2013).

² *Saunders v. State*, 401 A.2d 629 (1979), *cert. denied*, 101 S.Ct. 128 (1980).

³ See, *Saunders v State*, 2013 WL 1559231 (Del.)(Saunders' eighth Rule 61 motion); *Saunders v. State*, 2014 WL 5460433 (Del.)(Saunders' ninth Rule 61 motion); *Saunders v. State*, 2016 WL 762589 (Del.)(Saunders' tenth Rule 61 motion).

See also, *Saunders v. Redman*, No. 79-303-WKS (D.Del. October 24, 1979)(Saunders' first petition for habeas corpus relief); *Saunders v. Neal*, C.A. No. 89-623-JLL (D.Del. Jan. 10, 1992)(Saunders' second petition for habeas corpus relief); *Saunders v. Neal*, 818 F.Supp. 84 (D.Del. 1993)(Saunders' third petition for habeas corpus relief); *Saunders v. Taylor*, 1997 WL 129347 (D.Del. 1997)(Saunders' fourth petition for habeas corpus relief); *Saunders v. Markell*, 2013 WL 663407 (D.Del. 2013)(Saunders' fifth petition for habeas corpus relief).

4. This is Saunders eleventh Rule 61 motion for postconviction relief.
5. On August 28, 2019, Saunders filed the subject Rule 61 motion. In the subject motion, Saunders claims that he was: 1) denied due process and equal protection because the judge was not impartial; 2) denied due process because he was not provided with counsel to assist him with previous postconviction relief motions; and 3) denied due process because of prosecutorial misconduct during summation at trial.
6. Saunders raised the first claim, the alleged lack of the judge's impartiality, in his ninth Rule 61 motion⁴ and again in his tenth Rule 61 motion.⁵ These motions were found to be without merit.⁶
7. Saunders raised the second claim, the right to Rule 61 counsel, in previously filed Rule 61 motions that were already held to be without merit. The Delaware Supreme Court recognized that Saunders was afforded court-appointed counsel in

⁴ See, *Saunders v. State*, 2014 WL 5460433 (Del. 2014)(Saunders seeks to disqualify the judge deciding the postconviction motion).

⁵ See, Superior Court Docket No. 269, Letter/Order issued on November 13, 2015 (In this tenth motion for postconviction motion, Saunders claimed that the trial judge had some personal animosity towards him based on comments made by the judge.) This claim was found to be without merit by the Superior Court. See, Superior Docket Nos. 269, 272, and 274. The denial of this claim was affirmed by the Delaware Supreme Court on appeal. See, *Saunders v. State*, 2016 WL 762589 (Del. 2016).

⁶ *Id.*

his second motion for post-conviction relief.⁷ Thereafter, in all subsequently filed postconviction motions, Saunders' right to counsel claims, including those right to counsel claims due to his physical ailments, were held to be without merit by the Superior Court and thereafter affirmed by the Delaware Supreme Court on appeal.⁸

8. Saunders raised his third claim, prosecutorial misconduct during summation, in previous filed postconviction motions. This claim was held to be without merit.⁹

9. Rule 61 mandates that in second or subsequent postconviction motions, the motion shall be summarily dismissed unless the defendant establishes: 1) that *new* evidence exists that creates a strong inference that the defendant is actually innocent of the charges for which he was convicted, or 2) the existence of a *new* rule of constitutional law made retroactive to cases on collateral review rendered his

⁷ *Saunders v. State*, 2013 WL 1559231 (Del.)(None of Saunders' prior Rule 61 motions have been successful, including his second motion for which, according to the record before us, he was afforded court-appointed counsel.).

⁸ See, *Saunders v. State*, 2013 WL 1559231 (Del.)(Saunders claim that the Superior Court erred by denying his motion for the appointment of counsel because he suffers from a number of physical ailments is denied); *Saunders v. State*, 2014 WL 5460433 (Del.)(Saunders' ninth postconviction motion and right to counsel claims were already raised and rejected in his eight postconviction motion and are denied as legally frivolous.)

⁹ See, *State v. Saunders*, 1983 WL 413311, * 2-3 (Del.Super.)(denial of Saunders' claims of prosecutorial misconduct during summation), *affirmed*, 602 A.2d 623 (Del. 1984)(defendant failed to show actual prejudice resulting from prosecutor's improper vouching). See also, *Saunders v. Neal*, 818 F.Supp. 84, 85 (D.Del. 1993) (claims of prosecutorial misconduct that prosecutor made unfairly prejudicial remarks during argument held to be without merit); *Saunders v. Taylor*, 1997 WL 129347, *4 (D.Del.)(re-raises claims of prosecutorial misconduct).

convictions invalid.¹⁰ If it plainly appears from the motion for postconviction relief that the movant is not entitled to relief, the Court may enter an order for its summary dismissal and cause the movant to be notified.¹¹

10. In this case, Saunders has not pled with particularity that any *new* evidence exists that creates a strong inference that he is actually innocent of the charges for which he was convicted or that there is a *new* rule of law that would render his conviction invalid.

11. Saunders alleges that trial transcripts were “recently located” and that this somehow constitutes “new” evidence. Yet, Saunders raised all three of the claims raised herein in previously filed postconviction motions. Moreover, Saunders does not rely on any of those allegedly “new” trial transcripts to support his instant claims but instead relies on past letters and materials long known to Saunders and referenced by Saunders in previously filed Rule 61 motions.

12. Third, in order to constitute “new” evidence to overcome the threshold pleading requirements, Saunders must show: 1) that the evidence is such as will probably change the result if a new trial is granted; 2) that it has been discovered since the trial and could not have been discovered before by the exercise of due

¹⁰ Super.Ct.Crim.R. 61(d)(2) & (5); and Rule 61(i).

¹¹ Super.Ct.Crim.R. 61(d)(5).

diligence; and 3) that it is not merely cumulative or impeaching.¹² Saunders was, of course, aware of the existence of the trial transcripts and could have timely obtained those transcripts through the exercise of due diligence if he genuinely desired to do so.

13. Saunders was represented by counsel at trial (in 1976), at his sentencing (in 1977), on direct appeal (in 1979), and during his postconviction motion (in 1981-1983).¹³ All the trial transcripts were available at all the critical stages of the proceedings. There is no reason why Saunders could not have raised these claims on direct appeal or in a timely filed Rule 61 motion if these claims truly had any merit.

14. Saunders cannot meet the showing required to overcome the threshold pleading requirements. None of Saunders claims stem from any *new* evidence, let alone, any *new* evidence that would probably change the result if a new trial was granted. In accordance with the mandates of Rule 61, Saunders motion should be denied since he failed to meet the pleading requirements allowing him to proceed with this Rule 61 motion.

¹² *State v. Page*, 2014 WL 4348286, *2 (Del.Super.), citing, *State v. Wright*, 653 A.2d 288, 298 (Del.Super. 1994).

¹³ See, Superior Court Docket Nos. 92, 105 118. See also, *State v. Saunders*, 1983WL 413311 (Del.Super.)(counsel represented Saunders on this postconviction motion).

15. Saunders motion also falls short of other procedural requirements that must be met in order to proceed with the merits of his claims. If a procedural bar exists, then the claim is barred and the court should not consider the merits of the claim.¹⁴

16. Rule 61 (i) imposes four procedural imperatives: (1) the motion must be filed within one year of a final order of conviction;¹⁵ (2) any basis for relief must be asserted in the first timely filed motion for postconviction relief absent exceptional circumstances (ie. discovery of *new* evidence creating a strong inference of actual innocence or *new* rule of constitutional law rendering the conviction invalid) warranting a subsequent motion being filed; (3) any basis for relief must have been asserted at trial or on direct appeal as required by the court rules unless the movant shows prejudice to his rights and cause for relief; and (4) any basis for relief must not have been formally adjudicated in any proceeding. The bars to relief however do not apply to a claim that the court lacked jurisdiction or to a claim that new evidence exists that movant is actually innocent or that there is a new law, made retroactive, that would render the conviction invalid.¹⁶

¹⁴ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

¹⁵ Super.Ct.Crim.R. 61(i)(1).

¹⁶ Super.Ct.Crim.R. 61.

17. In the subject action, Saunders' motion is time-barred.¹⁷ In order to be timely filed, a Rule 61 motion must be filed within one year of a final order of conviction.¹⁸ In this case, the final order of conviction was in 1980,¹⁹ and this motion was filed in August 2019, about 39 years later. This motion was filed well outside the applicable one-year limit. Saunders motion, at this late date, is time-barred.

18. As previously discussed, Rule 61(i)(2) further precludes this Court's consideration of Saunders' motion since Saunders has not satisfied the pleading requirements for proceeding with this motion. Saunders has not established that *new* evidence exists creating a strong inference of his actual innocence or the existence of a *new* rule of constitutional law made retroactive to this case that would render his conviction invalid. As previously stated, the three claims raised herein have all been previously raised and resolved in prior postconviction motions. Saunders has offered nothing new to support his claims. Saunders has only reiterated what he previously presented in prior postconviction motions to support his claims. This motion is procedurally barred.

19. Rule 61(i)(4) also precludes Saunders' claims raised herein since all three claims were raised and adjudicated in previously filed postconviction motions.

¹⁷ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

¹⁸ Super.Ct.Crim.R. 61(i)(1).

¹⁹Super.Ct.Crim.R. 61(m)(3).

Saunders claims, which have already been raised, cannot now be re-stated, refined and re-raised in order to again seek review.²⁰

20. Rule 61(i)(3) further prevents this Court from considering any claim raised by Saunders at this late date that had not previously been raised. Saunders was aware of, had time to, and the opportunity to raise the claims presented herein in a timely filed motion.

21. Saunders has not asserted any credible reason why the claims raised herein could not have been raised in prior Rule 61 motions. Saunders has not established any prejudice to his rights and/or cause for relief. Saunders had time and opportunity to raise any issue raised herein in a timely filed direct appeal and/or in a timely filed postconviction motion. There is no just reason for Saunders' delay in doing so. Having been provided with a full and fair opportunity to present any issue desired to be raised in a timely filed motion, any attempt at this late juncture (over 43 years after trial and over 39 years after final judgment) to raise, re-raise or re-couch a claim is procedurally barred.

22. Saunders has failed to meet the pleading requirements for proceeding with the subject motion and, therefore, this motion should be denied. Saunders' motion is also time-barred and otherwise procedurally barred.

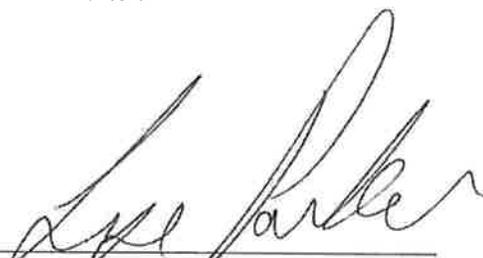
²⁰ *Johnson v. State*, 1992 WL 183069, at *1 (Del.); *Duhadaway v. State*, 877 A.2d 52 (Del. 2005).

23. Saunders request for the appointment of counsel in this eleventh Rule 61 motion, like his request for the appointment of counsel for his eighth, ninth, and tenth Rule 61 motions, is denied. Rule 61, as amended effective June 4, 2014, provides that for second and subsequent postconviction relief motions, such as the subject motion, counsel is to be appointed only in limited exceptional situations.²¹

24. Having fully, thoroughly and carefully considered Saunders' motion and the evidentiary record, none of the exceptional circumstances giving rise to the entitlement to the appointment of counsel exists in this case. Saunders has failed to satisfy the pleading requirements for proceeding with this motion and his claims are also untimely and otherwise procedurally barred. As such, the appointment of counsel for Saunders' untimely, eleventh Rule 61 motion, is hereby denied.²²

For all of the foregoing reasons, Saunders' Motions for Postconviction Relief and for the Appointment of Counsel should be DENIED.

IT IS SO RECOMMENDED.



Commissioner Lynne M. Parker

cc: Prothonotary

²¹ Super.Ct.Crim.R. 61(e)(5).

²² *Id.*